

Nuclear Regulatory Commission

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(3) The personal information obtained on an individual from a criminal history record check may be transferred to another licensee:

(i) Upon the individual's written request to the licensee holding the data to re-disseminate the information contained in his/her file; and

(ii) The gaining licensee verifies information such as name, date of birth, social security number, sex, and other applicable physical characteristics for identification.

(4) The licensee shall make criminal history records obtained under this section available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

(5) The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, on an individual (including data indicating no record) for 1 year after termination or denial of unescorted access to the nuclear power facility or access to Safeguards Information.

[52 FR 6314, Mar. 2, 1987; 52 FR 7821, Mar. 13, 1987, as amended at 53 FR 52994, Dec. 30, 1988; 55 FR 35563, Aug. 31, 1990; 56 FR 19008, Apr. 25, 1991; 57 FR 7645, Mar. 4, 1992; 59 FR 662, Jan. 6, 1994; 59 FR 38554, July 29, 1994; 60 FR 24552, May 9, 1995; 68 FR 58820, Oct. 10, 2003; 69 FR 58822, Oct. 1, 2004; 72 FR 49561, Aug. 28, 2007; 73 FR 30460, May 28, 2008]

EFFECTIVE DATE NOTE: At 73 FR 63580, Oct. 24, 2008, § 73.57 was amended by revising the section heading and paragraphs (a)(1), (a)(2), (b)(2)(i) and (b)(2)(ii) and by adding paragraph (e)(3), effective Feb. 23, 2009. For the convenience of the user, the added and revised text is set forth as follows:

§ 73.57 Requirements for criminal history records checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information.

(a) *General.* (1) Each licensee who is authorized to operate a nuclear power reactor under part 50 of this chapter, or to engage in an activity subject to regulation by the Commission shall comply with the requirements of this section.

(2) Each applicant for a license to operate a nuclear power reactor under part 50 of this chapter or to engage in an activity subject to regulation by the Commission, as well as each entity who has provided written notice to the Commission of intent to file an application for licensing, certification, permitting, or approval of a product subject to reg-

ulation by the Commission shall submit fingerprints for those individuals who will have access to Safeguards Information.

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(b) * * *

(2) * * *

(i) For unescorted access to the nuclear power facility (but must adhere to provisions contained in §§ 73.21 and 73.22): NRC employees and NRC contractors on official agency business; individuals responding to a site emergency in accordance with the provisions of § 73.55(a); a representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement at designated facilities who has been certified by the NRC; law enforcement personnel acting in an official capacity; State or local government employees who have had equivalent reviews of FBI criminal history data; and individuals employed at a facility who possess "Q" or "L" clearances or possess another active government granted security clearance, *i.e.*, Top Secret, Secret, or Confidential;

(ii) For access to Safeguards Information only but must adhere to provisions contained in §§ 73.21, 73.22, and 73.23: the categories of individuals specified in 10 CFR 73.59.

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(e) * * *

(3) In addition to the right to obtain records from the FBI in paragraph (e)(1) of this section and the right to initiate challenge procedures in paragraph (e)(2) of this section, an individual participating in an NRC adjudication and seeking to obtain Safeguards Information for use in that adjudication may appeal a final adverse determination by the NRC Office of Administration to the presiding officer of the proceeding. The request may also seek to have the Chief Administrative Judge designate an officer other than the presiding officer of the proceeding to review the adverse determination.

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§ 73.59 Relief from fingerprinting and criminal history records check for designated categories of individuals.

(a) For purposes of this section, the phrase "Safeguards Information" means information not otherwise classified as National Security Information or Restricted Data, which specifically identifies a licensee's or applicant's detailed—

(1) Control and accounting procedures or security measures (including security plans, procedures, and equipment) for the physical protection of special nuclear material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

(2) Security measures (including security plans, procedures, and equipment) for the physical protection of source material or byproduct material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

(3) Security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (a)(1) and (a)(2) of this section; or

(4) Any other information within the scope of Section 147 of the Atomic Energy Act of 1954, as amended, the unauthorized disclosure of which, as determined by the Commission through order or regulation, could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of radiological sabotage or theft or diversion of source, byproduct, or special nuclear material.

(b) Notwithstanding any other provision of the Commission's regulations, fingerprinting and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, are not required for the following individuals prior to granting access to Safeguards Information:

(1) An employee of the Commission or of the Executive Branch of the United States government who has undergone fingerprinting for a prior U.S. government criminal history check;

(2) A member of Congress;

(3) An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a

prior U.S. government criminal history check;

(4) The Governor of a State or his or her designated State employee representative;

(5) A representative of a foreign government organization that is involved in planning for, or responding to, nuclear or radiological emergencies or security incidents who the Commission approves for access to Safeguards Information;

(6) Federal, State, or local law enforcement personnel;

(7) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

(8) Agreement State employees conducting security inspections on behalf of the NRC pursuant to an agreement executed under section 274.i. of the Atomic Energy Act;

(9) Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC.

[71 FR 33992, June 13, 2006]

EFFECTIVE DATE NOTE: At 73 FR 63573, Oct. 24, 2008, § 73.59 was revised, effective Feb. 23, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 73.59 Relief from fingerprinting, identification and criminal history records checks and other elements of background checks for designated categories of individuals.

Fingerprinting, and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, and other elements of background checks are not required for the following individuals prior to granting access to Safeguards Information, including Safeguards Information designated as Safeguards Information-Modified Handling as defined in 10 CFR 73.2:

(a) An employee of the Commission or the Executive Branch of the United States government who has undergone fingerprinting for a prior U.S. government criminal history records check;

(b) A member of Congress;

(c) An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. government criminal history records check;

(d) The Comptroller General or an employee of the Government Accountability Office who has undergone fingerprinting for a

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prior U.S. Government criminal history records check;

(e) The Governor of a State or his or her designated State employee representative;

(f) A representative of a foreign government organization that is involved in planning for, or responding to, nuclear or radiological emergencies or security incidents who the Commission approves for access to Safeguards Information, including Safeguards Information designated as Safeguards Information—Modified Handling;

(g) Federal, State, or local law enforcement personnel;

(h) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

(i) Agreement State employees conducting security inspections on behalf of the NRC pursuant to an agreement executed under section 274.i. of the Atomic Energy Act of 1954, as amended;

(j) Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC;

(k) Any agent, contractor, or consultant of the aforementioned persons who has undergone equivalent criminal history records and background checks to those required by 10 CFR 73.22(b) or 73.23(b).

§ 73.60 Additional requirements for physical protection at nonpower reactors.

Each nonpower reactor licensee who, pursuant to the requirements of part 70 of this chapter, possesses at any site or contiguous sites subject to control by the licensee uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium, alone or in any combination in a quantity of 5000 grams or more computed by the formula, $\text{grams} = (\text{grams contained U-235}) + 2.5 (\text{grams U-233} + \text{grams plutonium})$, shall protect the special nuclear material from theft or diversion pursuant to the requirements of paragraphs 73.67 (a), (b), (c), and (d), in addition to this section, except that a licensee is exempt from the requirements of paragraphs (a), (b), (c), (d), and (e) of this section to the extent that it possesses or uses special nuclear material that is not readily separable from other radioactive material and that has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet

from any accessible surface without intervening shielding.

(a) *Access requirements.* (1) Special nuclear material shall be stored or processed only in a material access area. No activities other than those which require access to special nuclear material or equipment employed in the process, use, or storage of special nuclear material, shall be permitted within a material access area.

(2) Material access areas shall be located only within a protected area to which access is controlled.

(3) Special nuclear material not in process shall be stored in a vault equipped with an intrusion alarm or in a vault-type room, and each such vault or vault-type room shall be controlled as a separate material access area.

(4) Enriched uranium scrap in the form of small pieces, cuttings, chips, solutions or in other forms which result from a manufacturing process, contained in 30-gallon or larger containers, with a uranium-235 content of less than 0.25 grams per liter, may be stored within a locked and separately fenced area which is within a larger protected area provided that the storage area is no closer than 25 feet to the perimeter of the protected area. The storage area when unoccupied shall be protected by a guard or watchman who shall patrol at intervals not exceeding 4 hours, or by intrusion alarms.

(5) Admittance to a material access area shall be under the control of authorized individuals and limited to individuals who require such access to perform their duties.

(6) Prior to entry into a material access area, packages shall be searched for devices such as firearms, explosives, incendiary devices, or counterfeit substitute items which could be used for theft or diversion of special nuclear material.

(7) Methods to observe individuals within material access areas to assure that special nuclear material is not diverted shall be provided and used on a continuing basis.

(b) *Exit requirement.* Each individual, package, and vehicle shall be searched for concealed special nuclear material before exiting from a material access area unless exit is into a contiguous material access area. The search may